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FILED

JUN 21 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In Re WAL-MART STORES, INC.  
WAGE AND HOUR LITIGATION

Case Numbers: C 06 02069 SBA

**CLASS ACTION**

~~[Proposed]~~ ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED CLASS  
ACTION SETTLEMENT

This Document Relates To:

Case Nos.

C 06 02069 SBA (Smith) and  
CV 06 05411 (SBA) Ballard

This matter came before the Court on the motion filed by Plaintiffs, on behalf of themselves and the previously certified class, for preliminary approval of a proposed class action settlement. The Court, having considered and reviewed the documents, arguments and evidence submitted by the moving party, and good cause appearing therefore, does hereby GRANT the motion, and FINDS and ORDERS as follows:

1. On February 13, 2008, the Court certified a plaintiff class. In connection with the granting of preliminary approval, the Court conditionally grants the request to expand the class definition and the class period and will execute the Amended Settlement Certification Order submitted with the motion for preliminary approval.

2. For settlement purposes only, pursuant to Federal Rule of Civil Procedure (32)(a) and 23(b)(3), the Court conditionally certifies the following class:

Named Plaintiffs Danton Ballard, Nathan Lyons, Barry Smith and Michael Wiggins and all former California hourly and salaried associates of defendant Wal-Mart Stores, Inc., including those employed at Wal-Mart Stores, Sam's Club and Distribution Centers (except for truck drivers), whose employment with Wal-Mart ended at any time from March 20, 2002 up to March 26, 2010;

### **Salaried Associate Sub-class:**

All Settlement Class Members who worked at a Wal-Mart Store or Sam's Club and were paid on a salaried basis at the time of their termination;

### Distribution Center Sub-class:

All Settlement Class Members who worked at a Distribution Center and were paid on either an hourly or salaried basis at the time of their termination;

### Hourly Associate Sub-class:

All Settlement Class Members who worked at a Wal-Mart store or Sam's Club and were paid on an hourly basis at the time of their termination.

A class member may be a member of more than 1 sub-class.

20       3.     The Court conditionally finds that, for the purposes of approving this  
21 settlement only, the proposed Class meets the requirements for certification of a  
22 settlement class under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:  
23 (a) the proposed Class is ascertainable and so numerous that joinder of all members of  
24 the Class is impracticable; (b) there are questions of law or fact common to the  
25 proposed settlement Class; (c) the claims of Plaintiffs are typical of the claims of the  
26 members of the proposed settlement Class; (d) Plaintiffs and their counsel will fairly  
27 and adequately protect the interests of the proposed settlement Class; and (e) a class

1 action is superior to the other available methods for an efficient resolution of this controversy.

2       4.     If for any reason the Court does not grant final approval to the settlement,  
3 each Party shall retain all of their respective rights in connection with the February 13,  
4 2008 Certification Order.

5       5.     The Court's conditional findings are limited solely to the claims brought  
6 on behalf of the proposed settlement Class. The Court's findings are for purposes of  
7 conditionally certifying the settlement Class only and will not have any claim or  
8 preclusion or estoppel effect and shall not be used for any purpose in any other action  
9 against Defendant, or in this Action if the settlement is not finally approved.

10      6.     The Court appoints, for settlement purposes only, Danton Ballard, Nathan  
11 Lyons, Barry Smith and Michael Wiggins as Class Representatives.

12      7.     The previously appointed class counsel are appointed as class counsel for  
13 the settlement class.

14      8.     The Court finds on a preliminary basis that the proposed terms of the  
15 settlement as set forth in the Settlement Agreement attached as Exhibit A to the motion  
16 (including the proposed award of attorneys' fees, litigation costs, and enhancements  
17 to the Class representatives) are reasonable, and therefore grants preliminary approval  
18 of the proposed settlement. Based on a review of the papers submitted with the motion,  
19 the Court finds that the settlement is the result of arms-length negotiations conducted  
20 after Class Counsel had adequately investigated the claims and had become familiar  
21 with the strengths and weaknesses of those claims. The assistance of an experienced  
22 negotiator in the settlement process supports the Court's conclusion that the settlement  
23 is non-collusive.

24      9.     The Court finds and concludes that the Notice of Settlement (Long Form),  
25 the Claim Form, the Request for Exclusion Form and the form for published notice  
26 (Short Form) (collectively referred to herein as the Notice Packet, and attached as  
27 Exhibits 1-4 to Exhibit A to the motion), as well as the procedure set forth in the  
28 Settlement Agreement for providing notice to the Class, will provide the best notice

1 practicable, satisfies the notice requirements of Rule 23(e), and adequately advises  
2 Class Members of their rights under this settlement, and therefore meets the  
3 requirements of due process.

4       10. The Notice Packet fairly, plainly, accurately, and reasonably informs Class  
5 Members of: (1) appropriate information about the nature of this Action, the definition  
6 of the Class, the identity of Class Counsel, and the essential terms of the Settlement,  
7 including the plan of allocation; (2) appropriate information about Plaintiffs' and Class  
8 Counsel's applications for Class Representatives' Enhancement Awards, and the Class  
9 Counsel attorneys' fees and litigation and cost award; (3) appropriate information about  
10 how to claim a share of the proceeds under the settlement, and about Class Members'  
11 rights to appear through counsel if they desire; (4) appropriate information about how  
12 to object to the settlement or submit an opt out request, if a Class Member wishes to do  
13 so; (5) appropriate instructions as to how to obtain additional information regarding  
14 this Action and the Settlement.

15       11. The proposed plain for mailing the Notice Packet by first class mail to the  
16 Class Members' last know address is an appropriate method, reasonably designed to  
17 reach all individuals who would be bound by the settlement. The proposal for  
18 publication of the Short Form of the Notice further enhances the method for reaching  
19 those who would be bound by the settlement. There is no alternative method of  
20 distribution that would be more practical, and any more reasonably likely to notify  
21 Class Members who may not receive notice pursuant to the proposed distribution plan.  
22 The proposed Notice Packet and the notice plan (including mailed notice, published  
23 notice and notice post on a website) are the best practicable notice under the facts and  
24 circumstances of this case.

25       12. The proposed Claim Form allows Class Members a full and fair  
26 opportunity to submit a claim for proceeds under the settlement. The Notice Packet  
27 fairly, accurately, and reasonably informs Class Members that the failure to complete  
28

1 and submit a Claim Form, in the manner and time specified, will constitute a waiver of  
2 any right to obtain any share of the proceeds under the Settlement.

3       13. The Notice Packet, with a "no postage necessary" return envelope, and the  
4 manner of distributing the Notice of Settlement and Claim Form to the Class are  
5 approved.

6       14. The parties are ordered to carry out the settlement according to the terms  
7 of the Settlement Agreement.

8       15. The Court appoints Epiq Systems as the Claims Administrator. Promptly  
9 following entry of this order, the Claims Administrator will prepare final versions of  
10 the Notice Packets, incorporating into them the relevant dates and deadlines set forth  
11 in this order and the Settlement Agreement and will commence the notice process  
12 within 30 days of this order. The Short Form of Notice shall be published as soon as  
13 practicable after the Notice Packet is mailed.

14       16. The deadlines for filing requests for exclusion, objections to the settlement  
15 and claims shall be in conformity with the Settlement Agreement.

16       17. Objections by any Plaintiff Settlement Class Member to: (a) the proposed  
17 settlement contained in the Settlement Agreement and described in the class notice; (b)  
18 the payment of fees and reimbursement of expenses to Plaintiffs' Counsel up to the  
19 negotiated maximum amounts set forth in the Settlement Agreement; and/or (c) entry  
20 of the Judgment shall be heard, and any papers submitted in support of said objection  
21 shall be considered by the Court at the Final Approval Hearing only if, on or before  
22 August 27, 2010, such objector files with the Clerk of the United States District Court  
23 for the Northern District of California: (1) a notice of his, her or its objection and a  
24 statement of the basis for such objection; (2) if applicable, a statement of his, her or its  
25 intention to appear at the Final Approval Hearing. Copies of the foregoing must also  
26 be mailed or delivered to counsel for the Parties identified in the class notice. In order  
27 to be considered for hearing, all objections must be submitted to the Court and actually  
28 received by the counsel identified in the class notice on or before August 27, 2010. A

1 Plaintiff Settlement Class Member need not appear at the Final Approval Hearing in  
2 order for his, her or its objection to be considered.

3       18. No later than fourteen days before the Final Approval Hearing, the Parties  
4 shall file all papers in support of the Motion for Final Approval of the Settlement  
5 and/or any papers in response to any valid and timely objection with the Court, and  
6 shall serve copies of such papers upon each other and upon any objector who has  
7 complied with the provisions of Paragraph 17 of this Order.

8       19. No later than fourteen days before the Final Approval Hearing, Class  
9 Counsel shall file its motion for award of attorney's fees and costs and for class  
10 representative enhancement awards.

11       20. The Court will conduct a Final Approval Hearing on September 28, 2010  
12 at 1:00 p.m. in Courtroom 1 to determine, (1) whether the proposed settlement is fair  
13 reasonable, and adequate and should be finally approved by the Court; (2) the amount  
14 of attorneys' fees and costs to award to Class Counsel; and (3) the amount of  
15 Enhancement Awards to award to Class Representatives.

16        21. In the event the Settlement is not finally approved, or otherwise does not  
17 become effective in accordance with the terms of the Settlement Agreement, this Order  
18 shall be rendered null and void and shall be vacated, and the Parties shall revert to their  
19 respective positions as of before entering into the Settlement Agreement.

## IT IS SO ORDERED

22 Dated: 7/21/10

Hon. Saundra Brown Armstrong  
United States District Judge